

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C. 20460

SEP - 6 1984

OFFICE OF AIR AND RADIATION

MEMORANDUM

SUBJECT: Pinal Guidance on Use of Unannounced Inspections

FROM:

Director

Stationary Source Compliance Division

Office of Air Quality Planning and Standards

TO:

Air and Waste Management Division Directors

Regions II, IV, VI-VIII and X

Air Management Division Directors Regions I, III, V, and IX

This memorandum presents final guidance on the use of unannounced inspections by EPA as a component of Regional inspection programs. Comments in response to the draft guidance issued on July 17, 1984 were received from six Regions and one State agency. Because all respondants generally supported the proposed guidance, changes to it were minimal. Those changes and comments are discussed below.

One Region felt that the tone of the guidance was too strong in encouraging the use of unannounced inspections, that under the policy "EPA is somehow required not to announce most of its inspections," and that the policy might "create . unnecessary concern over what fraction of each Region's inspections is unannounced. Our strong support for use of unannounced inspections as a component of an overall inspection program, which comes through in this guidance, is based on the belief that they are more representative of normal operating conditions. While we recognize the concerns associated with use of such inspections, several Regions perform a high percentage of unannounced inspections without adverse impact on resources or EPA/State relations. However, although this guidance does encourage the use of unannounced inspections, no fractional or percentage requirements were established or implied; this judgment should be made by the Region in light of the nature of the inspections to be performed and the sources in the Region. We would expect to see some program in all Regions, however.

Another Region expressed a concern for program implementation: "We would like to emphasize the need for maximum flexibility and control to be retained by the Regional Office staff in setting up and conducting unannounced or announced inspections." We believe this guidance offers a great deal of Regional discretion in implementation of a nationally-consistent inspection program using unannounced and announced inspections. While the guidance offers direction and options, it also defers to Regional experience: As the guidance specifically notes "Regional Offices are free to vary the procedures used if they believe an alternative approach would be preferable."

One Region expressed concern that an inspection policy utilizing unannounced inspections could "damage the working relationships of inspectors and the company officials," and that "some companies will shut down or refuse entry in light of what they perceive is a change in agency attitude." While these concerns are real, Regional experience has shown that they can be minimized such that they are not an impediment to performing unannounced inspections. Most sources accept unannounced inspections and consider them little more than an inconvenience once they realize that EPA has the legal right to perform them, and will do so when appropriate. Experience indicates that companies which refuse entry to EPA inspectors are few, and that entry is usually just delayed until the company discusses the matter with Regional Counsel.

Finally, one Region requested clarification on whether the definition of an announced inspection included such activities as stack tests, CEM audits, and PSTs. We believe the definition of an announced inspection would include these types of site visits, however, Regions are free to assess these activities for announcement purposes on a case-by-case basis if that has been their previous practice.

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Attachment

cc: Air Program Branch Chiefs, Region I-X
Air Compliance Branch Chiefs, Regions II, III, V, VII, IX

Guidance On EPA Use of Unannounced Inspections For Stationary Sources of Air Pollution

The inspection is the primary compliance assurance method presently available in the air program for validating source performance. As such, the issue has been raised concerning whether or not inspections should be announced to the source in advance of the actual visit. To assist in responding to this issue, the Stationary Source Compliance Division (SSCD) surveyed (through correspondence dated January 18, 1984) EPA Regional Office practices and experience in performing both announced and unannounced inspections. Based on the information compiled through this survey, SSCD recommends that all Regional inspection programs incorporate unannounced inspections as part of their overall inspection approach. The use of this inspection type has value in obtaining data which are more representative of normal source operating conditions and can encourage continuous source compliance. Possible obstacles to the use of this type of inspection identified by some Regions have been successfully addressed by the Regional Offices which effectively carry out an unannounced inspection program and are therefore no overall bar to its use.

The SSCD survey conducted earlier this year received nine Regional responses. From these responses several observations were made. Usage of unannounced inspections is highly variable among Regions; several Regions perform them in the majority of situations while others only perform them under very limited circumstances or not at all. The most commonly cited positive aspect of performing unannounced inspection is the opportunity to observe the source under normal operating conditions, since the source does not have time to prepare for the inspection. Other positive aspects mentioned are:

- Detection of surreptitious violations;
- Detection of visible emissions and O&M type problems and violation;
- Creation of an increased level of attention by a source to its compliance status, and
- Projection of a more serious attitude toward surveillance by the Agency.

One Region found the "in violation" rate in one State in 1982 to be three times higher at sources where inspections were unannounced versus announced.

Some of the potential negative aspects of performing unannounced inspections were reiterated by several Regions:

- The source may not be operating, or key plant personnel are not available; and
- There may be an adverse impact on Regional resources or EPA/State relations.

However, as previously noted, these concerns have been addressed and were successfully resolved by Regions which make fuller use of unannounced inspections. Therefore, it was felt the cited drawbacks were more anticipated than real and could be overcome.

The conclusion drawn from this survey is that all Regions can and should perform unannounced inspections when appropriate as a component of their inspection programs. The following guidance addresses the issue of when announced or unannounced inspections are more appropriate, and provides procedures based on Regional experience which facilitate the incorporation of unannounced inspections into Regional inspection programs. Regional Offices are, however, free to vary the procedures used if they believe an alternative approach would be preferable.

Definition Of An Announced And An Unannounced Inspection

For the purpose of this guidance, an announced inspection shall mean an onsite visit where the source to be inspected is given advanced notification by the control agency of the specific date of the inspection such that enough time would elapse to permit significant source operating modifications prior to the site visit.

An unannounced inspection shall mean an onsite visit where the control agency provides no prior notification of the actual date of the inspection to the source, or where notice is given shortly before the inspection such that the representativeness of the source operation is not likely to be affected.

Advanced notification of both announced and unannounced inspection dates shall be provided to the State or local control agency. In this regard, please note the requirements of Section 114(d) of the Clean Air Act relative to notice to States.

Announced Inspections

EPA is not required by federal regulation to announce the date of an impending inspection to the source. Therefore, announced inspections should be performed by EPA and its' representatives when some specific purpose is served by providing such notice. Situations where announced inspections would be appropriate are:

- When specific information is being sought which must be prepared by the source, or where the source must make significant accommodations for the inspector to gather the information;
- When the assistance of specific plant personnel is necessary for the successful performance of the inspection, i.e., the information they provide can not be obtained from other on-duty plant personnel or by a follow-up information request;
- When inspecting government facilities or sources operating under government contract where entry is restricted due to classified operations; and
- When inspecting un-manned or extremely remote sources.

Questionable operating status of a source or process generally does not preclude utilizing an unannounced inspection. When daily operating status is questionable, the inspector may confirm it with the source just prior to leaving for the inspection. The inspector may also wish to consult with the State or local agency to obtain any current information they may have about the source's operational status.

Unannounced Inspections

Unannounced inspections will provide the most representative picture of normal source operation and practices. They should be performed whenever there is no reason for announcing the inspection to the source as described previously.

As an alternative to arriving at the source totally unannounced, if in the inspector's judgment the representativeness of the source operation would not be altered and the success of the inspection would be improved by contacting the

source shortly before the scheduled inspection time, this may also be considered unannounced. If this latter method is used, the amount of advanced notice given the source should be noted in the inspection report.

Inspection Announcement Responsibility

When EPA accompanies a State or local agency in conducting an inspection, or where EPA is requested by a State to assist in compliance monitoring and enforcement at a source, the decision regarding inspection announcement should defer to the preference of the State or local agency. When the State or local agency accompanies EPA on an EPA-initiated inspection, inspection announcement shall be the responsibility of EPA and the State or local agency should be so informed.

Inspection Announcement Protocol

The decision on inspection announcement to the source and the name of the responsible individual should be noted in the inspection report. The State or local agency should be given a minimum of five working days notice in advance of an inspection, whether it is announced to the source or not. An exception to this minimum time period would be when the inspection is scheduled in response to an emergency situation which does not allow such advanced notice. In cases where EPA has a reasonable basis for believing the State or local agency will notify the source of the inspection, no notification is required. If the source is to be given advance notice of an inspection date, it should be afforded a minimum of five working days notice, but no greater than that given the State or local agency. This latter point will assure that the State or local agency is always notified before notice is given to the source.

When announcing an inspection to the source, advanced notice may be given by telephone or in writing. Instances where written notification (instead of oral) is appropriate are:

- When requested by the State/local agency or by the source:
- When extensive or specific records are being sought,
- When the inspection is to be performed solely by an EPA contractor;
- When inspecting government facilities with classified operations or otherwise restricted entry; and
- Special-purpose inspections, e.g., to establish conditions for a source-specific SIP revision.

If notice is given orally, the date of the telephone call and the person contacted should be noted in the inspection report. A copy of any written notification should be attached to the inspection report.

Unannounced Inspection Implementation

State and local agencies should be notified by EPA that unannounced inspections are a component of EPA source inspection programs, and that they will be performed.

A pre-inspection review of all pertinent sources of information on the source should be made (or intensified) to avoid any preventable inconvenience to the source as a result of the inspection. This should include contact with the State or local agency to obtain any additional information which they may have.

Sources may be contacted as necessary, and notified that an unannounced inspection will be performed during a specified time period (e.g., quarter or fiscal year) and that they should notify EPA if key plant personnel or processes will be unavailable for known extended periods. Portable sources, such as asphalt concrete plants, may be required, pursuant to Section 114 to report their scheduled location(s) on a monthly or quarterly basis, if questionable source location is an impediment to performing unannounced inspections.